

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEPHEN J. HARMELIN, RECEIVER AD LITEM, et al. : CIVIL ACTION

v. :

MAN FINANCIAL INC., et al. : NO. 06-1944

MEMORANDUM RE: UBS's MOTION TO DISMISS

Baylson, J.

September 12, 2007

This case involves an allegedly fraudulent futures trading scheme with investor losses estimated at almost \$200 million. Presently before the court is Defendant UBS Fund Services (Cayman), Ltd. ("UBS") Motion for Dismissal. For more detailed descriptions of the facts underlying this case, see Memoranda reported at 2006 WL 3791341, 2006 WL 2869532, and 2006 WL 2707397. As these Memoranda disclose, this case was originally started against Man Financial, Inc. ("Man"), which had made UBS a third-party Defendant. Subsequently, the Receiver Ad Litem, Stephen J. Harmelin, Esq., filed a Second Amended Complaint on May 8, 2006 naming UBS as a direct Defendant, charging two counts, one for negligence and the other breach of contract.

Further background will be found in the Court's Memorandum No. 1 concerning summary judgment motions, filed this date.

I. Brief Factual Background and Procedural History

Philadelphia Alternative Asset Management Company, LLC ("PAAMCo") was formed on July 22, 2002, by Paul M. Eustace ("Eustace"), who was PAAMCo's President and only principal. PAAMCo is a Delaware Limited Liability Company headquartered in King of

Prussia, Pennsylvania. On or about May 28, 2004, Eustace established the hedge fund at issue in this litigation, Philadelphia Alternative Asset Fund, Ltd. (the “Offshore Fund”),¹ to trade in futures. The Offshore Fund is a Cayman Islands corporation. On behalf of the Offshore Fund, Eustace established a business relationship with Man, hiring Man as the Offshore Fund’s Futures Commission Merchant. Eustace then hired UBS as the Offshore Fund’s Fund Administrator. The Offshore Fund and UBS entered into an administration agreement on July 29, 2004.

On June 24, 2005, the Commodity Futures Trading Commission (“CFTC”) brought suit in this District against Eustace and PAAMCo, which was still controlled by Eustace, alleging various fraudulent acts. The CFTC requested that a Receiver be appointed to investigate the allegations and to seek recovery of assets belonging to the fund and its investors. Judge John R. Padova, to whom the case was originally assigned, appointed a Receiver for PAAMCo and its “partners, affiliates or subsidiaries, or related entities.”

During the course of the CFTC suit, Eustace admitted to several fraudulent acts and eventually entered into a consent decree. On May 8, 2006, the Receiver initiated the present suit and filed a complaint asserting several claims against Man, all of which are based the notion that Man participated in and permitted Eustace’s fraud. Man added UBS as a third-party Defendant. On July 6, 2007, the Receiver Ad Litem amended the complaint to include UBS as a defendant.² The Receiver Ad Litem asserts one claim of Negligence and one claim of Breach of Contract against UBS, similarly alleging that UBS participated in and permitted Eustace’s fraud.

II. Summary of the Arguments

¹ UBS refers to the Offshore Fund, *i.e.* Philadelphia Alternative Asset Fund, Ltd., as “PAAF”.

² As noted above, UBS was previously a third-party defendant.

UBS seeks dismissal of both claims against it, Negligence and Breach of Contract. UBS first argues that the applicable statute of limitations bars the negligence claim against it. UBS contends that the Plaintiff's claims accrued no later than May 2005, and because this Complaint was not filed against UBS until July 6, 2007, the negligence claim is barred by the two-year Pennsylvania statute of limitations for negligence. UBS further asserts that the discovery rule did not toll the filing of the negligence claim because, as of June 22, 2005, when the CFTC filed its lawsuit and this Court appointed a Receiver the next day, the latter was on notice of wrongdoing, but more than two years had lapsed before the Receiver Ad Litem filed the present claim against UBS as a Defendant.

UBS next contends that Mr. Harmelin does not have standing to assert its claims. According to UBS, the Receiver was only appointed to represent PAAMCo and can not act on behalf of the Offshore Fund. For this standing argument, UBS relies in large part on the notion that PAAMCo and the Offshore Fund are legally distinct entities. Mr. Harmelin responds that this Court has already held that the Receiver has standing to bring claims on behalf of the Offshore Fund.

UBS also makes a standing argument implicating the distinction between the Offshore Fund and the Offshore Fund's investors. Here, UBS claims that the Receiver is really alleging harm to the Offshore Fund's investors, as opposed to harm to the Offshore Fund itself. According to UBS, since the Receiver was not appointed to represent the investors but to represent the fund, he only has standing to allege harms to the fund. Mr. Harmelin responds that in fact he is not acting on behalf of the Offshore Fund's investors but on behalf of the fund itself.

Finally, UBS argues that this Court can not exercise personal jurisdiction over it. UBS contends that it is a Cayman Islands entity that does not have sufficient contacts with the state of Pennsylvania, and principles of due process thus prevent this Court from exercising jurisdiction over it. The Receiver responds that this Court has already determined that in fact it does have personal jurisdiction over UBS, and there is no reason to re-litigate the matter.

III. Legal Standards

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

When deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), the Court proceeds somewhat differently. The allegations of the complaint are still taken as true. However, once a jurisdictional defense is raised, the plaintiff bears the burden of proving, through affidavits, or competent evidence, sufficient contacts with the forum state to establish personal jurisdiction. See Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir. 1996), cert. denied, 519 U.S. 1028, 117 S. Ct. 583, 136 L. Ed .2d 513 (1996)). The plaintiff must establish those contacts with reasonable particularity. See Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1996). Once the plaintiff makes out a *prima facie*

case in favor of personal jurisdiction, the burden shifts to the defendant to establish that the presence of some other considerations would render jurisdiction unreasonable. See Carteret Sav. Bank v. Shushan, 954 F.2d 141, 150 (3d Cir. 1992).

IV. Legal Discussion

A. Statute of Limitations

The Court agrees that the two-year Pennsylvania statute of limitations applies to the negligence claim in this case. Assuming, arguendo, that the claim accrued not later than June 23, 2005 when the Receiver was first appointed, this claim against UBS was filed more than two years thereafter. However, as this Court has held in its Memorandum filed this date rejecting the statute of limitations as a reason to grant summary judgment in favor of Man, the Court reiterates its conclusion in that opinion that the Receiver was barred from filing litigation such as the present case for a period of time, thus tolling the statute of limitations.

Despite the terms of the Order signed by Judge Padova, which gave the Receiver power to “initiate . . . any actions or proceedings . . .”, this Court intended conserve the valuable resources in the possession of the Receiver in favor of allowing the CFTC to complete its investigation at no cost to the investors, using its expertise, and that the Receiver would have to wait for the results of the CFTC’s investigation to be reviewed by the Court before the Court would allow the Receiver to initiate any litigation.

However, there is another reason applicable to UBS as to why the statute of limitations should be tolled, and that relates to the facts surrounding Mr. Harmelin’s replacement of Mr. Hodgson as Receiver Ad Litem, as dealt with in this Court’s Memorandum dated May 3, 2007,

2007 WL 1314663. Because of Mr. Hodgson's non-disclosure of his relationship with the related UBS corporate entities, the Court felt compelled to replace him.

The concept of equitable tolling is broad enough to encompass tolling the statute when the Court-appointed individual, charged with making a decision about whom to sue, is subject to an undisclosed but serious potential conflict of interest, that requires substitution of another person as Receiver, as was done in this case. It is also undisputed that Man's naming of UBS as a third-party Defendant was timely, and UBS was therefore a party in this case for some months prior to being named as a direct Defendant. Although the Court understands the significant difference between being a direct Defendant, as opposed to a third-party Defendant, once again applying principles of equitable estoppel, the Court can find little prejudice to UBS from being subject to these principles of equitable tolling.

Given these unique facts, the period of time during which Mr. Hodgson did not file any claim against UBS is subject to equitable tolling. The record facts which support the Court's conclusion on this point are set forth in the Memorandum rejecting Man's Motion for Summary Judgment, pages 20-22.

B. Standing

This Court has already determined that the Receiver has standing to pursue his claims. UBS has not provided the Court with any reason to change its previous determination.

UBS first asserts that the Receiver does not have standing because it represents PAAMCo and not the Offshore Fund. However, at several points in this ongoing litigation, the Court has clarified that the Receiver stands in the shoes of the Offshore Fund and can assert

claims on its behalf. See Hodgson v. Gilmartin, 2006 WL 2707397, at *10; Hodgson v. Gilmartin, 2006 WL 2869532, at *4. As noted above, the Receiver was actually appointed to represent PAAMCo and its “partners, affiliates or subsidiaries, or related entities.” The Offshore Fund and PAAMCo are clearly “related entities” even though they are legally distinct. Indeed, from a practical standpoint, PAAMCo arguably controlled the Offshore Fund. See CFTC v. Eustace, 2005 WL 2862945, at *3. Thus, since the Offshore Fund qualifies as an entity related to PAAMCo, the Receiver may represent the Offshore Fund.

UBS also contends that the Receiver does not have standing because he is really asserting claims on behalf of the Offshore Fund’s investors and not on behalf of PAAMCo. The Court has already rejected this particular standing argument. See Hodgson v. Gilmartin, 2006 WL 2869532, at *7. An examination of the Second Amended Complaint reveals that the Receiver indeed makes claims on behalf of the Offshore Fund, which, as noted above, the Receiver has standing to pursue. According to the Second Amended Complaint, UBS appointed an unqualified and untrained employee to handle the Offshore Fund account, failed to properly supervise and monitor the Offshore Fund account, ignored internal policies and procedures regarding independent verification, and accepted Eustace’s explanations for questionable activity without comprehending or verifying them. (Second Amended Complaint, hereinafter “SAC”, at ¶ 20.) The Second Amended Complaint sets forth additional details to support its allegations against UBS. See SAC at ¶ 37-39, 42, 44, 51-55, 59, 61, 113-114.

As noted above, Mr. Harmelin asserts two claims against UBS: breach of contract and negligence. He asserts both claims on behalf of the Offshore Fund. The breach of contract claim alleges the breach of a contract between the Offshore Fund and UBS, not between the

Offshore Fund's investors and UBS. (SAC at ¶ 203-206.) The negligence claim alleges that UBS owed a duty to the Fund, not the Fund's investors. (SAC at ¶ 207-211.) The Complaint also sets out how UBS harmed the Offshore Fund. According to the Complaint, UBS enabled Eustace to continue to fraudulently hide his trading losses. By so doing, UBS essentially allowed Eustace to keep trading, prevented the investors from mitigating their losses and thus reduced the Offshore Fund's assets. (SAC at ¶ 61.)

The Court finds that UBS's argument borders on the frivolous. This Court has trouble discerning any substantive distinction between the Offshore Fund and its investors. UBS's alleged fraudulent activity could certainly be construed as harming the Offshore Fund's investors. Harming the investors and harming the Offshore Fund are not mutually exclusive. If the Offshore Fund recovers in this case, the Receiver will be obliged to distribute its assets to its investors. Mr. Harmelin's allegations against UBS are sufficient to survive a 12(b)(6) motion. An in-depth exploration of causation is not appropriate at this time. "Whether Plaintiff can prove causation, and if so, the nature and extent of those losses, is an issue that survives a 12(b)(6) motion." Hodgson v. Gilmartin, 2006 WL 2869532, at *7.

C. Personal Jurisdiction

Despite UBS's repeated contentions, the record contains sufficient claim-specific contacts between UBS and Pennsylvania for the Court to exercise personal jurisdiction over UBS. Federal Rule of Civil Procedure 4(e) allows a district court to assert personal jurisdiction over a non-resident to the extent allowed by the law of the state in which it sits. See Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984). Pennsylvania's long-

arm statute provides that a court may exercise personal jurisdiction over non-residents “to the fullest extent allowed under the Constitution of the United States.” 42 PA. CONS. STAT. ANN. § 5322(b). Pennsylvania’s long-arm statute includes a provision frequently referred to as the “tort out / harm in” provision, 42 PA. CONS. STAT. ANN. § 5322(a)(4), which “extends jurisdiction to anyone who causes harm or tortious injury, intentionally or not, in Pennsylvania, through acts or omissions outside Pennsylvania.” Pennzoil v. Colelli, 149 F.3d 197, 201 (3d Cir. 1998).

Due process requires that the defendant have “minimum contacts” with the forum state, and that the exercise of jurisdiction comports with “traditional notions of fair play and substantial justice.” Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). “Minimum contacts must have a basis in ‘some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” Remick, 238 F.3d at 255 (quoting Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 109, 107 S. Ct. 1026, 94 L. Ed. 2d. 92 (1987) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)). When determining whether personal jurisdiction exists, the court must resolve the question based on the circumstances that the particular case presents. Burger King, 471 U.S. at 485.

A court may exercise personal jurisdiction based on a defendant’s general or specific contacts with the forum. General and specific jurisdiction are “analytically distinct categories, not two points on a sliding scale.” O’Connor v. Sandy Lane Hotel, 2007 WL 2135274, at *5 (3d Cir.). General jurisdiction is based upon the defendant’s “continuous and systematic contacts”

with the forum. General Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001) (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-416, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984)). Specific jurisdiction is appropriate only if the “plaintiff’s cause of action arises out of a defendant’s forum-related activities, such that the defendant ‘should reasonably expect being haled into court’ in that forum.” Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prod. Co., 75 F.3d 147, 151 (3d Cir. 1996) (quoting Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)). Specific jurisdiction is established where the defendant “purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that ‘arise out of or relate[] to’ those activities.” BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000) (quoting Burger King, 471 U.S. at 472)). To find that a plaintiff’s claims “arise out of or relate to” the defendant’s contacts with the forum state, the Third Circuit requires “a closer and more direct causal connection than that provided by the but-for test.” O’Connor, 2007 WL 2135274, at *7. However, the required causal connection is looser than the tort concept of proximate causation. Id. (citing Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 99-100 (3d Cir. 2004)). The appropriate analysis is fact-intensive, focusing on the “reciprocity principle upon which specific jurisdiction rests” – whether the defendant received the benefits and protections of a state’s laws to the extent that it should, as a quid pro quo, submit to the burden of litigation in the state. O’Connor, 2007 WL 2135274, at *7.

This Court has already determined that it has specific jurisdiction over UBS – in the context of Man’s third-party Complaint against UBS. (See transcript of hearing, April 18, 2007, p. 19, where the Court reviewed specific documents that showed UBS’s contacts with

Pennsylvania and rejected the UBS claim that the Man third-party Complaint should be dismissed because of lack of personal jurisdiction.)³ Although UBS is now a direct Defendant, the facts underlying its conduct and contacts with Pennsylvania have not changed. This Court concludes it has properly exercised personal jurisdiction over UBS, and UBS's arguments to the contrary are unconvincing.

It is perhaps worthwhile to restate why this Court has specific jurisdiction over UBS. As explained above, unless due process would prevent it, specific jurisdiction exists when a defendant 1) purposely directs its activities at a resident of the forum; and 2) the harms alleged in the litigation arose out of those activities. BP Chemicals, 229 F.3d at 259. In the present case, the record contains ample evidence that the Cayman Island office of UBS, through its affiliate in Pennsylvania, actively sought the business of Eustace and PAAMCo, operating out of Philadelphia.⁴ Evidence indicates that UBS arranged for a meeting in Philadelphia between UBS's Pennsylvania colleagues and Eustace to discuss PAAMCo. Further evidence indicates that UBS had its affiliates conduct due diligence on PAAMCo and Eustace in Pennsylvania. UBS eventually established an account for the Offshore Fund and Paul Eustace signed the account opening agreement in Philadelphia. In seeking PAAMCo's business and in conducting due diligence on PAAMCo and Eustace, UBS reached out and directed its activities at a resident of the state of Pennsylvania.

³ At the time, the Court denied UBS's Motion to Dismiss without prejudice, allowing UBS to raise the issue of personal jurisdiction again; however in doing so, UBS has not raised any new arguments, but rather repeats its old arguments that the Court has previously rejected.

⁴ Man developed this record when UBS was a third-party defendant. UBS appears to now argue that Mr. Harmelin, as Plaintiff, should re-develop the record in order to sustain his burden as Plaintiff of proving personal jurisdiction. This Court previously relied on the record developed by Man to determine that it has personal jurisdiction over UBS. The Court refuses to require that Mr. Harmelin repeat jurisdictional discovery. As it stands, the record contains more than enough evidence to support this Court's exercise of personal jurisdiction over UBS.

In opposing this Court’s exercise of personal jurisdiction, UBS once again attempts to argue that PAAMCo and the Offshore Fund are distinct and that UBS interacted with the Offshore Fund, a Cayman Islands entity, and not with PAAMCo, a Pennsylvania entity. There are facts that if believed would allow a jury to find that PAAMCo controlled the Offshore Fund. The evidence on record illustrates that UBS knew this. Throughout its work of servicing the Offshore Fund, UBS regularly communicated with Eustace and other PAAMCo employees.⁵ UBS even sent invoices for its fund administration services to PAAMCo in King of Prussia, Pennsylvania. UBS’ argument that it interacted only with the Offshore Fund, as opposed to PAAMCo, is unpersuasive.

UBS also attacks this Court’s exercise of personal jurisdiction on the “arising out of” requirement. As noted above, for a court to exercise specific personal jurisdiction, the plaintiff’s claims should “arise out of” defendant’s forum-related activities. According to UBS, the complaint does not allege claims that arose out of UBS’s forum-related activity. However, some of UBS’s alleged negligent acts, according to the Complaint, were actually communications between UBS and Eustace. In those instances, the forum-related activity and the negligent acts are one in the same. Furthermore, the administration agreement between UBS and the Offshore Fund resulted from UBS seeking the business of Eustace and PAAMCo and conducting due diligence on them in Pennsylvania. This administration agreement forms the basis for Mr. Harmelin’s breach of contract claims. As noted above, the relevant legal analysis focuses on whether the defendant benefitted from the laws of the forum state and could foresee that it would

⁵ Although when Eustace created PAAMCo, he was the only employee, he subsequently hired additional individuals.

be subject to the laws of the forum state. O'Connor, 2007 WL 2135274, at *7. The record indicates that UBS and Eustace negotiated an agreement for UBS to administer the Offshore Fund and that UBS continued to communicate with Eustace regarding the Offshore Fund. The record further indicates that UBS had reason to know that Eustace/PAAMCo had some control over the Offshore Fund and knew that Eustace/PAAMCo was based in Pennsylvania. UBS should have foreseen that it could be subject to litigation in Pennsylvania.

UBS points out that Eustace was physically located in Canada at the time of many of his interactions with UBS. Therefore, UBS contends that the communications being used as the basis for this Court's exercise of personal jurisdiction over UBS were really communications between the Cayman Islands and Canada, not between the Cayman Islands and Pennsylvania. Along the same lines of argument, UBS also states that PAAMCo's email server was physically located in Canada and not in Pennsylvania, such that emails between UBS and Eustace or between UBS and other PAAMCo employees never entered Pennsylvania. According to UBS, for these reasons, the Court may not exercise personal jurisdiction over UBS.

The Court disagrees. It is worth reiterating the general role that Pennsylvania has played in this case. Eustace, as the driving force behind both PAAMCo and the Offshore Fund, established the PAAMCo headquarters in King of Prussia, Pennsylvania.⁶ As this Court has already noted, having one part of the investment program located in Pennsylvania and one part in the Cayman Islands was necessary to Eustace's entire operation. "One [part] could not operate without the other; both were needed to have the effective offshore advantages, and those

⁶ It is also relevant to note that Eustace chose to name his business PAAMCo ("Philadelphia Alternative Asset Management Company, Ltd.") and to name the Offshore Fund "Philadelphia Alternative Asset Fund, Ltd." Both names illustrate an intention for the entities to be associated with, or perceived as associated with, the Commonwealth of Pennsylvania.

advantages were an integral part of the strategy based in Pennsylvania.” Hodgson v. Man Financial, 2006 WL 3791341, at *5 (E.D. Pa.). When UBS solicited Eustace and PAAMCo’s business, it was soliciting the business of Pennsylvania citizens. When UBS communicated with Eustace and other PAAMCo employees, it was communicating with individuals and entities based in Pennsylvania. It does appear that Eustace spent a considerable amount of time in Canada, operating out of an office in Oakville, Ontario. However, this does not change the fact that PAAMCo was headquartered in Pennsylvania, and UBS, in its interactions with PAAMCo and Eustace, knew it was dealing with a Pennsylvania-based company. UBS benefitted from the protections of Pennsylvania law in its business relationship with Eustace and PAAMCo, and thus it is not unfair to subject UBS to personal jurisdiction in the state of Pennsylvania, for claims arising out of that business relationship.

Because this Court finds that it exercises specific jurisdiction over UBS, it does not address whether it also exercises general jurisdiction over UBS, on the grounds that the larger UBS corporate entity, including UBS Cayman, has continuous and systematic contacts with Pennsylvania.⁷

⁷ Although the Court has no hesitation in finding that UBS is subject to the exercise of personal jurisdiction by this Court on existing law and the facts presented; offshore investments may present troubling concepts. On the one hand, the rights of individuals working in the Cayman Islands and other countries which attract United States investors and their funds should be respected under international law. Also, any investor in the Offshore Fund who read the materials knew that there would be involvement by Cayman Islands entities, and that these Offshore relationships were beneficial to the investors because of either favorable tax and/or regulatory conditions. Thus, considering these factors, there is no inequity in following traditional concepts of a state’s long arm statute. On the other hand, there is a counter argument that promoters, such as Eustace and the entities which use foreign countries, sometimes referred to as “tax havens,” should not be able to escape the reach of U.S. courts’ jurisdiction because this would allow them to attract U.S. funds but evade stricter United States regulatory enactments and tax laws. These investment vehicles are generally available only to wealthy individuals. If investors are not knowledgeable that such Offshore entities were being used, this might be an additional factor in extending the jurisdiction of U.S. courts. However, the scenario set forth in this paragraph has not entered into the Court’s analysis in this case.

It should be noted that the UBS briefs do not seek dismissal because of any lack in the substantive allegations of negligence and breach of contract, which is not surprising given the doctrine of notice pleading.

An appropriate Order follows.

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ORDER

AND NOW, this 12th day of September, 2007, for the reasons stated in the foregoing Memorandum, it is hereby ORDERED that the Motion of UBS to Dismiss the Second Amended Complaint (Doc. No. 324) is DENIED.

BY THE COURT:

s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.